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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1940.

## No. 452.

In the Matter of
CHARLES A. McCULLOCH, Farmer-Debtor.

CHARLES A. McCULLOCH, Petitioner,

*versus*

WILBUR L. LOFTUS, - - Respondent.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals, Seventh Circuit, Chicago, Illinois. Entered under Above Docket Number, September 20, 1940.

## PETITION FOR A REHEARING IN ABOVE CAUSE.

CHARLES A. McCULLOCH,
*Farmer-Debtor.*

WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

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*v.*

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Farmer-Debtor's reasons for filing this verified prayer for a rehearing of his petition for Writ of Certiorari.

In the initial proceedings the Special Master stressed the absence of petitioner's wife being most damaging to him in the case because he allowed all personal property belonging to him to be assessed in her name with the household goods which belonged to her. This was done to avoid two lists of personal property. From the conclusion of law this would all be her property. See Record, pages 64 and 65, Allie Melton as assessor.

The question to be decided was whether petitioner was a farmer at the time he filed under the Frazier-Lemke Act, May 29, 1937. He was a farmer and has been a farmer ever since he was old enough to do farm work. The year petitioner filed his papers, to-wit, May 29, 1937, he was

farming his wife's farm and had farmed the land known as the McCulloch-Embrey tract, cutting hay from it since 1925 and it remains farm land until it is platted and the plat recorded and offered for sale, which has not been done up to this date. There are about thirty acres in said tract and it has been used as farm land long before purchase by petitioner and was in the city ever since New Albany became a city.

Petitioner also farmed the fourteen acre tract for several years. See (R.) testimony of Peter Roth, page 42, Nos. 21 to 23. Testimony of Arthur Harris, page 50. Testimony of John Bauer, page 51, Nos. 7, 11, 12, 13, 14, 15, 16. Testimony of Fred Zapp, page 56, Nos. 28, 29, 30. Testimony of Martin McCulloch, page 67, Nos. 16 to 20. Testimony of petitioner, page 11, Nos. 89, 90, 91.

The Court of Appeals erred when they upheld the lower Court on the question whether petitioner was a farmer at the time he filed his papers, May 29, 1937, for petitioner cut hay, sold poultry, poultry products, cream, milk and live stock. He farmed the ten acres where he lived and also rented to his brother the 33 acre dairy farm for dairy purposes. See (R.), page 38, testimony of Henry B. Graybrook.

The Court erred when they failed to qualify practical farmers as expert witnesses because they were not subpoenaed as such. In fact they were not subpoenaed at all but offered themselves as witnesses voluntarily.

The greatest reason for farmer-debtor's prayer for a rehearing. The petitioner being under the wrong impression these objections were not answered before the hearing. The respondent's brief in opposition to Writ of Certiorari to the United States Circuit Court of Appeals for

the Seventh Circuit. Some of his reasons are not correct and are not supported by evidence appearing anywhere in the record. In the Summary of Argument in respondent's brief, as follows:

1. Says petitioner had failed to file a copy of record with the petition. Petitioner's reason for not doing so was because it was delayed in the printing, and it was filed with his brief with the proof of service. Also the second petition was filed at the same time. This was filed in plenty of time for respondent's use in making up his reply brief (Letter b). Petitioner did not give reasons but perhaps they were concised too much. Why did not respondent quote Item 2, last paragraph on page 1 and first paragraph on page 2 in petitioner's petition? (Letter C). Petitioner's brief does not refer to cases other than the Beach case (301 U. S. 435) because petitioner relies wholly on it. First National Bank and Trust Company v. Beach, 301 U. S. 435, 812 Ed. 1206, 1208, 5, 13, 14.

Page 2 of petitioner's petition refers to Rule 38, paragraph 5, letter (b). By the fact that important matter involved in the case at bar having never before been before the Supreme Court, but which ought to be ruled upon by the Supreme Court. More than that or has decided a Federal question in a way probably in conflict with applicable decisions of this Court. Where the decision in the lower Court in petitioner's case discriminates against small farmers. Respondent's attorneys have been very active in trying to combine income from labor and income from investments other than farm property. In petitioner's case income from labor for his first seven years in public office was smaller than from his farming interests. The last six years of his public office which ended in 1930 his income from his farming interests was less than his income from

his public office. From 1930 up to the present time the principal part of his income is from his farming activities and not income from investments. The high Court has settled that question in the Beach case, other than farm property. That makes petitioner a farmer within the meaning of Subsection (r) of Section 75 of the United States Bankruptcy Act. Where the petitioner's is like the Beach case. Beach was at one time in the mercantile business and the last several years prior to his filing under the Frazier-Lemke Act, his labor was devoted to farming activities, as petitioner's has been. Beach had leased three-fourths of his farm to tenants; so did petitioner lease part of his farm to tenants. Beach had other non-farming property which he rented and the revenue from this property was credited to him as income from investment and not as income from farm labor activities. But his revenue from his farm property was credited to his farming activities with his labor. This is true of petitioner.

In support of this prayer, note Judicial Code of the Acts of February 13, 1925; Chapter 229, 43 Stat. 936 (Amendments to June 29, 1938, included). See Section 240 (a).

This prayer is not made for delay but in absolute good faith, and a copy hereof has been placed in the mail addressed to counsel for respondent.

CHARLES A. MCCULLOCH,
*Farmer-Debtor.*

Subscribed and sworn to before me this 18th day of October, A. D. 1940.

CHARLES R. MCBRIDE,
(Notarial Seal) *Notary Public.*

My Commission expires May 8, 1942.